

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LANTZ HOWARD WASHINGTON,

Defendant-Appellant.

UNPUBLISHED

April 6, 2006

No. 259433

Wayne Circuit Court

LC No. 04-008047-01

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of one count of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of assault and battery, MCL 750.81, entered after a jury trial. We affirm.

Defendant was charged with two counts of assault with intent to do great bodily harm less than murder as a result of allegations that he beat complainant, his former girlfriend, on two occasions. Complainant testified that defendant struck her repeatedly with his hand and fist, and that as a result she was required to undergo surgery to have her spleen removed. In a statement to the police, defendant acknowledged that he argued with complainant, but denied striking her.

Prior to the delivery of opening statements, the officer in charge informed the prosecutor and defense counsel that he recognized a juror from church. The officer did not know the juror's name, and did not speak with her at church. The prosecutor and defense counsel stipulated that the juror should be designated as the alternate juror. After the jury had been instructed, defense counsel reminded the trial court of the stipulation, and the court excused one juror.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do bodily harm to another, i.e., an assault; and (2) an intent to do great bodily harm less than murder. Assault with intent to do great bodily harm less than murder is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The requisite intent can be inferred from the surrounding facts and circumstances. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). Minimal circumstantial evidence is sufficient to prove that an actor had the requisite intent. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

Assault and battery consists of assaulting and battering an individual. MCL 750.81. A battery is an intentional, unconsented, and harmful or offensive touching of the person of another, or of something closely connected to the person. *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004).

Defendant argues that the evidence was insufficient to support the verdicts because the complainant was not a credible witness. We disagree. Complainant's testimony was inconsistent in some respects; however, she acknowledged that her memory of the events of the night was not perfect, and that she remembered virtually nothing after she was taken to the hospital. Complainant's credibility was for the jury to evaluate, *Milstead*, *supra*, and her testimony, coupled with the evidence that defendant continued to strike her even after she asked that he stop doing so, and that the injuries she sustained necessitated the removal of her spleen, supported the jury's verdict. *Beaudin*, *supra*; *Strong*, *supra*.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.* at 600. The defendant bears the burden of proving ineffective assistance. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant argues that trial counsel rendered ineffective assistance by failing to move for a mistrial or an evidentiary hearing after the juror recognized by the officer in charge was allowed to remain on the jury and deliberate. We disagree. The record is not altogether clear; however, after the trial court excused a juror, neither party indicated that that person was not the juror who the officer in charge recognized from church. It is not evident that that juror remained on the jury. However, because the evidence was sufficient to support defendant's convictions, to conclude that if this juror remained on the jury she unduly influenced the outcome of the case is speculative. Defendant has not demonstrated that he was prejudiced. *Carbin*, *supra*.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio